

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD L. EVANS, JR.,	§	
	§	No. 383, 2011
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	Kent County
	§	
STATE OF DELAWARE,	§	
	§	Cr. ID Nos. 0808023433
Plaintiff Below,	§	0807012992
Appellee.	§	

Submitted: September 19, 2011

Decided: November 22, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

O R D E R

This 22nd day of November 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Ronald L. Evans, Jr., filed this appeal from the Superior Court's July 8, 2011 denial of his second motion for modification of sentence pursuant to Superior Court Criminal Rule 35(b) ("Rule 35(b)"). The appellee, State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) It appears from the record that Evans pled guilty on March 27, 2009, to Trafficking in Cocaine and three counts of Possession with Intent to Deliver Cocaine. Evans was immediately sentenced in accordance with the plea agreement to a total of seventy years at Level V imprisonment suspended after twelve years for decreasing levels of supervision.

(3) Within ninety days of sentencing, Evans filed two motions for correction of illegal sentence and one motion for modification of sentence. By order dated July 23, 2009, the Superior Court denied Evans' motions. Evans filed an appeal from the July 23, 2009 order but later voluntarily withdrew the appeal.¹ Thereafter, on appeal from the Superior Court's denial of Evans' motion for postconviction relief, this Court's Order of May 9, 2011 affirmed the Superior Court's judgment.²

(4) On June 24, 2011, Evans filed his second motion for modification of sentence. By order dated July 8, 2011, the Superior Court denied the motion. This appeal followed.

(5) On appeal, Evans argues that the Superior Court's denial of his second sentence modification motion was an abuse of the court's discretion. His claims are without merit. Under Rule 35(b), Evans' second sentence

¹ See docket at 19, *Evans v. State*, Del. Supr., No. 455, 2009 (Sep. 28, 2009) (certifying copy of appellant's notice of voluntary dismissal dated Sep. 23, 2009 to Superior Court).

² *Evans v. State*, 2011 WL 1758828 (Del. Supr.).

modification motion was both repetitive and untimely.³ In the absence of extraordinary circumstances, the motion was properly denied by the Superior Court.⁴

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

³ See Del. Super. Ct. Crim. R. 35(b) (providing that a motion must be filed within ninety days of sentencing and that the court will not consider repetitive requests).

⁴ *Id.* (providing that the court will consider a motion filed more than ninety days after sentencing only in extraordinary circumstances). See also Del. Code Ann. tit. 11, § 4217 (2007 & Supp. 2010) (establishing a procedure to permit the Department of Correction to apply for a modification of an offender's sentence for good cause shown, including "exceptional rehabilitation" and "serious medical illness").